

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ANNA AVALOS O/B/O MANUEL AVALOS  
(DECEASED),  
  
Plaintiff,  
  
v.  
  
CAROLYN W. COLVIN,  
COMMISSIONER OF THE  
SOCIAL SECURITY ADMINISTRATION,  
  
Defendant.

Case No. ED CV 14-484-PJW  
  
MEMORANDUM OPINION AND ORDER

I.

## INTRODUCTION

Plaintiff appeals a decision by Defendant Social Security Administration ("the Agency"), denying her deceased husband's applications for Disability Insurance Benefits ("DIB") and Supplemental Security Income ("SSI"). She claims that the Administrative Law Judge ("ALJ") erred when he found that her husband was not credible, rejected the opinion of an examining doctor, and failed to include all of the claimant's functional limitations in the residual functional capacity determination. For the reasons explained below, the Court concludes that the ALJ erred and remands the case to the Agency for further proceedings.

## II.

## SUMMARY OF PROCEEDINGS

On December 28, 2010, decedent Manuel Avalos Rodriguez (hereinafter "the claimant") applied for DIB and SSI, alleging that he had been unable to work since December 12, 2009, due to congestive heart failure, diabetes mellitus, hypertension, low back strain, and pancreatitis. (Administrative Record ("AR") 66-71, 156-167, 184-90.) After his applications were denied initially and on reconsideration, he requested and was granted a hearing before an ALJ. (AR 79-84, 87-91.) On May 22, 2012, he appeared with counsel and testified at the hearing. (AR 61-74). A medical expert who also testified at the hearing noted that the claimant had not been examined by an orthopedist or an internist and recommended that this be done. (AR 71-73.) The ALJ agreed and suspended the hearing so that the claimant could undergo those examinations, which he did. On December 6, 2012, the claimant appeared with counsel and testified at a second hearing. (AR 49-60.) On December 18, 2012, the ALJ issued a decision denying the applications. (AR 10-18.) The claimant appealed to the Appeals Council, which denied review. (AR 1-6.) This action followed.

## III.

## DISCUSSION

A. The ALJ's Credibility Determination

Plaintiff contends that the ALJ failed to provide adequate reasons for rejecting the claimant's testimony. (Joint Stip. at 3-7.) For the following reasons, the Court agrees.

ALJs are tasked with judging the credibility of witnesses, including the claimants. In making these credibility determinations, they may employ ordinary credibility evaluation techniques. *Smolen v.*

1 *Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996). But, where a claimant has  
2 produced objective medical evidence of an impairment which could  
3 reasonably be expected to produce the symptoms alleged and there is no  
4 evidence of malingering, the ALJ can only reject a claimant's  
5 testimony for specific, clear, and convincing reasons, *id.* at 1283-84,  
6 that are supported by substantial evidence in the record. *Thomas v.*  
7 *Barnhart*, 278 F.3d 947, 959 (9th Cir. 2002).

8 The claimant testified that his heart condition and his back pain  
9 prevented him from working. (AR 52-54, 66-71.) The ALJ rejected this  
10 testimony because he found that it was undermined by the fact that the  
11 claimant's treatment had been routine and conservative, consisting of  
12 medication.<sup>1</sup> (AR 16.)

13 The fact that a claimant's treatment is routine and conservative  
14 is a factor that an ALJ may consider in evaluating credibility. See  
15 *Parra v. Astrue*, 481 F.3d 742, 751 (9th Cir. 2007); and *Burch v.*  
16 *Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005). The record on this  
17 issue, however, is somewhat mixed. As to the claimant's heart  
18 condition, the treatment was not always routine and conservative. In  
19 2009, he underwent emergency heart surgery and had a stent inserted.  
20 (AR 241-42, 251-53.) The Court would not characterize this as routine  
21 or conservative.

22 Following the surgery, it seems that the claimant's treatment  
23 consisted of testing and medication. (AR 383-448, 471-509.) At the  
24 time of the consultative examinations in June 2012, the claimant was  
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26 <sup>1</sup> The Court has focused on the claimant's heart condition and  
27 his back pain because it does not appear that he contended that his  
28 other ailments, including diabetes and pancreatitis, prevented him  
from working. (AR 53.)

1 taking four medications for his heart and blood pressure, i.e.,  
2 hydrochlorothiazide, carvedilol, Nifediac, and furosemide. (AR 456,  
3 460.)

4 It is hard for the Court to judge on this record whether the  
5 claimant's treatment for his heart condition was routine and  
6 conservative. Certainly the surgery was not. But it is less clear  
7 whether the treatment following the surgery was. None of the doctors  
8 suggested that it was. Nor did any propose a more aggressive  
9 treatment. Though, as the medical expert pointed out, the claimant  
10 had been told twice to obtain a nuclear stress test and there is no  
11 indication that he did (AR 71-72), the Court assumes that this testing  
12 was intended to be diagnostic and would not have altered the treatment  
13 regimen. Absent some indication from a doctor that this treatment was  
14 conservative, the Court cannot conclude that it was. As such, this  
15 reason for discounting the claimant's testimony is rejected.<sup>2</sup>

16 The Court would agree that the claimant's treatment for his  
17 allegedly disabling back pain was conservative. In fact, it was  
18 almost nonexistent. The claimant sometimes used a cane to get around  
19 but, as he admitted at the hearing, it was not prescribed to him. (AR  
20 53.) And though there were times when he complained about back pain  
21 to his doctors and took medication to relieve the pain, the record  
22 does not establish that he received any treatment beyond the  
23 medication, despite his claims to the contrary. (AR 455, 487-509.)

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24  
25 <sup>2</sup> The Court is not holding that, in every case, an ALJ has to  
26 point to a doctor's opinion that the treatment a claimant received was  
27 routine and conservative and a more proactive treatment was indicated.  
28 It is simply holding that, in this case, because there is no  
suggestion that the treatment was wanting and because treatment for  
this condition is not obvious to a lay person, the ALJ's finding that  
the treatment was routine and conservative is overruled.

1 In fact, he conceded to the consultative examiner that he was not  
2 being treated for his back pain in June 2012, and explained that the  
3 reason he was not was because he was waiting until after he addressed  
4 his diabetes and high blood pressure. (AR 460.) And, though he  
5 claimed that he had so severely injured his knee four months before  
6 the second administrative hearing that he was "unable to do anything,"  
7 there are no records showing he ever sought any treatment for it. It  
8 makes no sense that the claimant would be suffering from so much pain  
9 as a result of the injury that he was "unable to do anything" and he  
10 would not seek treatment to address it. As such, the Court concurs  
11 with the ALJ's finding that the claimant's failure to pursue more  
12 aggressive treatment for his back (and knee) undermines his claim that  
13 his pain precluded him from working.

14 The second reason the ALJ offered for questioning the claimant's  
15 testimony was that his medications were effective in controlling his  
16 conditions. (AR 16.) This is a legitimate reason for concluding that  
17 a claimant's condition is not disabling, *see Warre v. Comm'r of Soc.*  
18 *Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006) (holding "impairments  
19 that can be controlled effectively with medication are not  
20 disabling"), and it is supported by the record. The record  
21 demonstrates that the claimant's diabetes and his heart condition were  
22 controlled with medication. (AR 53, 55-56.) Though it less clear as  
23 to the claimant's back pain, there is enough evidence in the record to  
24 support the ALJ's finding in this regard, too. For example, the  
25 examining orthopedist concluded that, despite his condition and the  
26 pain it allegedly caused him, the claimant was practically  
27 unrestricted in his ability to push, pull, lift, and carry. (AR 458-  
28 59.)

1       The ALJ rejected the claimant's testimony that he was only able  
2 to perform limited daily activities because he found that the  
3 testimony was not objectively verified, was not supported by the  
4 "weak" medical evidence, and was outweighed by "other factors  
5 discussed in this decision." (AR 16.) These are not valid reasons  
6 for questioning a claimant's credibility.

7       First, there is no requirement that a claimant provide objective  
8 verification for his testimony. Though claimants sometimes submit  
9 testimonials from family members and friends who have observed them  
10 and can report on what they have seen, there is no requirement that  
11 they do so. And, though the medical evidence often provides some  
12 objective support for claimed limitations, that is not always the case  
13 nor is it a requirement for the testimony to be accepted.

14       As to the ALJ's consideration of the "weak" medical evidence and  
15 the "other factors" discussed in his nine-page decision, these reasons  
16 are not specific enough for the Court to decipher and/or uphold them.  
17 *See, e.g., Treichler v. Comm'r of Soc. Security*, 775 F.3d 1090, 1102-  
18 03 (9th Cir. 2014) (explaining ALJ required to identify testimony that  
19 is not credible and specify what undermines it).

20       In the end, the Court finds that two of the reasons proffered by  
21 the ALJ for discounting Plaintiff's testimony are valid and the rest  
22 are not. The Court concludes that these two reasons are not enough to  
23 uphold the ALJ's credibility finding in the context of this case. As  
24 such, the credibility issue is remanded for further consideration.  
25 *See Connett v. Barnhart*, 340 F.3d 871, 876 (9th Cir. 2003); *Harman v.*  
26 *Apfel*, 211 F.3d 1172, 1178 (9th Cir. 2000).

1 B. The Examining Internist's Opinion

2 Plaintiff contends that the ALJ erred in rejecting the opinion of  
3 the examining internist, Dr. Robin Alleyne, who had essentially  
4 concluded that the claimant was capable of performing only sedentary  
5 work, and accepting, instead, the opinion of the medical expert, who  
6 believed he could do more. For the following reasons, the ALJ's  
7 finding is affirmed.

8 It is the province of the ALJ to resolve conflicts in the medical  
9 evidence. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).  
10 Generally speaking, three types of doctors supply that evidence:  
11 treating doctors, examining doctors, and reviewing doctors. All other  
12 things being equal, treating doctors' opinions are entitled to the  
13 greatest weight because they are hired to cure and have more  
14 opportunity to know and observe the patient. *Id.* at 1041; see also 20  
15 C.F.R. 416.927(d)(2) ("Generally, we give more weight to opinions from  
16 your treating sources, since these sources are likely to be the  
17 medical professionals most able to provide a detailed, longitudinal  
18 picture of your medical impairment(s) and may bring a unique  
19 perspective to the medical evidence that cannot be obtained from the  
20 objective medical findings alone or from reports of individual  
21 examinations"). Examining doctors are next on the list, followed by  
22 reviewing doctors. See *Lester v. Chater*, 81 F.3d 821, 830-31 (9th  
23 Cir. 1995). ALJs, however, are not required to merely accept the  
24 opinion of any doctor and, where the opinion is contradicted, may  
25 reject it for specific and legitimate reasons that are supported by  
26 substantial evidence in the record. *Id.* at 830.

27 The ALJ found that examining internist Alleyne's opinion that the  
28 claimant was limited to sedentary work was not supported by the

1 medical record as a whole, including the unremarkable physical  
2 examinations and the mild x-ray findings that the ALJ had previously  
3 discussed in his decision. (AR 17.) He chose to rely, instead, on  
4 the medical expert's opinion because it was consistent with the record  
5 as a whole and because that doctor had reviewed all of the medical  
6 evidence and was familiar with the regulations governing social  
7 security cases.

8       The claimant's medical examinations, other than Dr. Alleyne's,  
9 were relatively unremarkable. Examining orthopedist Bernabe found the  
10 claimant in no distress and able to move about the office freely and  
11 without assistance. (AR 456.) In fact, other than a limitation on  
12 range of motion in his back, Dr. Bernabe found that the claimant had  
13 no limitations and was capable of performing what amounted to medium  
14 work. (AR 449-54.) The treating doctors, too, did not report  
15 anything particularly remarkable as a result of their examinations.  
16 (AR 335-71, 383-448, 480-507.)

17       The x-rays also support the ALJ's finding that Dr. Alleyne's  
18 opinion was questionable. Dr. Bernabe ordered x-rays of the  
19 claimant's spine in connection with his consultative examination and  
20 found that they were completely unremarkable except for a mild  
21 narrowing of the disc space at L5-S1. (AR 458.) Dr. Alleyne did not  
22 obtain and/or review any x-rays. (AR 460-64.)

23       As to the ALJ's reliance on the fact that the medical expert's  
24 opinion was consistent with the record as a whole, that is not  
25 specific enough. The ALJ was required to point out what evidence in  
26 the record he was referring to. The Court also rejects his reliance  
27 on the fact that the medical expert understood the regulations as the  
28



1 ALJ failed to explain how such an understanding bolstered the doctor's  
2 medical opinion.

3       Ultimately, however, the Court finds that the ALJ's other reasons  
4 for rejecting Dr. Alleyne's opinion and accepting the medical expert's  
5 opinion are valid. As the ALJ noted, the medical expert had reviewed  
6 the entire medical record in this case. (AR 16.) Dr. Alleyne had not  
7 reviewed any records. (AR 463.) Nor had he reviewed any x-rays. (AR  
8 460-64.) He simply examined the claimant, performed some testing  
9 (that was presumably limited due to the claimant's complaints of  
10 extreme pain), and recorded the history that the claimant provided.  
11 Though, normally, this might be enough, it was not enough here because  
12 the examining doctor's opinions were divergent and thus it was  
13 necessary to resort to the medical record to resolve the differences  
14 in opinion. For example, the claimant was examined by Dr. Alleyne on  
15 June 19, 2012. (AR 460.) According to Dr. Alleyne, he was in so much  
16 pain that "[a]ny slight movement cause[d] him to cry." (AR 461.) The  
17 claimant was unable to walk heel-to-toe on that day. (AR 461.)  
18 Interestingly, he had been examined by Dr. Bernabe just six days  
19 earlier and he was not in any pain. (AR 455-59.) In fact, according  
20 to Dr. Bernabe: "The claimant moved freely in and out of the office  
21 and around the examination room without the use of any assistive  
22 device." (AR 456.) He was also able to walk heel-to-toe. (AR 456.)  
23 As a result of his examination, Dr. Bernabe found that the claimant  
24 had no restrictions on his movement at all. (AR 459.)

25       The ALJ was tasked with resolving the contradictory medical  
26 opinions in this case and he did. The Court cannot say that he erred  
27 in doing so. For that reason, his decision will be upheld.

